

# PLANNING COMMISSION MINUTES

December 11, 2002

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:01 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Eric Johansen, Dan Maks, Shannon Pogue and Scott Winter.

Development Services Manager Steven Sparks, Senior Planner Kevin Snyder, Associate Planner Scott Whyte, Site Development Project Engineer Jim Duggan, Senior Transportation Engineer Randy Wooley, Senior Transportation Engineer Don Gustafson, City Arborist Pat Hoff, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## STAFF COMMUNICATION:

Development Services Manager Steven Sparks advised the Planning Commission that the first meeting of the Code Advisory Review Committee (CRAC) had been held the previous evening, adding that Commissioner Maks is serving as the liaison for the Planning Commission. He explained that Senior Planner Kevin Snyder and himself, along with their consultant, had outlined the topics that the Committee would discuss and attempt to resolve by June, adding that he anticipates that this would be presented to the Planning Commission by Summer or Fall of 2003.

1 **NEW BUSINESS:**

2  
3 **PUBLIC HEARINGS:**

4  
5 **A. TA 2002-0006 – PRECISION CHAPTER 20 TEXT**  
6 **AMENDMENTS**

7 Precision Holdings, LLP, at 14145 SW Tualatin Valley Highway,  
8 Beaverton, Oregon, has submitted an application for proposed  
9 amendments to the Development Code, as follows:

- 10  
11 1. Amend Development Code Section 20.20.20.2.B (Conditional  
12 Uses – Station Community-High Density Residential) to add a  
13 new Conditional Use – 12. Storage yard for fully operable  
14 vehicles for sale, lease, or rent, within ¼ mile of a Corridor; and  
15  
16 2. Amend Development Code Section 20.20.20.2.C (Prohibited Uses  
17 – Station Community-High Density Residential) to modify  
18 Section 20.20.20.2.C.23 to read Storage yards, except as allowed  
19 under Development Code Section 20.20.20.2.B.12.  
20

21 Chairman Voytilla explained that the applicant had requested a  
22 continuance of this item.

23  
24 Chairman Maks **MOVED** and Commissioner Barnard **SECONDED** a  
25 motion to continue TA 2002-0006 – Precision Chapter 20 Text  
26 Amendments to a date certain of January 8, 2003.

27  
28 Motion **CARRIED**, unanimously.  
29

30 **OLD BUSINESS:**

31  
32 Chairman Voytilla opened the Public Hearing and read the format for  
33 Public Hearings. There were no disqualifications of the Planning Com-  
34 mission members. No one in the audience challenged the right of any  
35 Commissioner to hear any of the agenda items, to participate in the  
36 hearing or requested that the hearing be postponed to a later date. He  
37 asked if there were any ex parte contact, conflict of interest or disquali-  
38 fications in any of the hearings on the agenda. There was no response.  
39

40 **CONTINUANCES:**

41  
42 **B. SUNRISE AT COOPER MOUNTAIN**

43 The following land use applications have been submitted for  
44 development of a 69-unit single-family residential project. The  
45 subject site is generally located east of SW 166<sup>th</sup> Avenue, south of

SW Nora Road, and northwest of SW Cinnabar Court and SW 163<sup>rd</sup> Avenue, and is specifically identified as Tax Lot 100 on Washington County Assessor's Map 1S1-30DD, Tax Lot 300 on Washington County Assessor's Map 1S1-29CC, and Tax Lot 800 on Washington County Assessor's Map 1S1-29C. The subject properties are zoned R-5 Urban Standard Density, and together total approximately 15.67 acres in size. Within the R-5 zoning district, single-family detached dwellings are permitted outright, and a request for a Planned Unit Development (PUD) is subject to Conditional Use Permit (CUP) approval.

**1. CUP 2002-0004 – SUNRISE AT COOPER MOUNTAIN  
PLANNED UNIT DEVELOPMENT – CONDITIONAL USE  
PERMIT**

*(Continued from November 6, 2002)*

The applicant requests approval of a Planned Unit Development for 69 single-family residential lots with lot sizes varying from approximately 3,600 square feet to approximately 15,000 square feet. In addition, the applicant proposes 29 separate tracts of land intended for the purpose of open space, tree preservation, water quality, and access. The proposed request for PUD would allow variation to the site development standards of the R-5 zone found in Section 20.05.50 of the Development Code. A decision for action on the proposed request shall be based upon the CUP approval criteria for a PUD as listed in Development Code Section 40.05.15.3.C, and is subject to review of the special condition criteria as listed in Development Code Section 40.05.15.3.D.

**2. TPP 2002-0005 – SUNRISE AT COOPER MOUNTAIN  
TREE PRESERVATION PLAN**

*(Continued from November 6, 2002)*

The applicant requests Tree Preservation Plan (TPP) approval for a site that includes a portion that is located within a Significant Tree Grove, specifically Grove No. NX1, according to the City's Significant Tree Inventory. Pursuant to Development Code Section 40.75.15.1.A.3, a TPP is required when development is proposed within a significant tree grove. The proposed plan would remove several trees considered part of Grove No. NX1 while retaining others. A decision for action shall be based upon TPP approval criteria listed in Development Code Section 40.75.15.1.C.3.

1                   **3. APP 2002-0012 – SUNRISE AT COOPER MOUNTAIN**  
2                   **APPEAL OF PLANNING DIRECTOR'S DECISION**

3                   *(Continued from November 6, 2002)*

4                   On October 25, 2002, the applicant, Four D Construction,  
5                   Incorporated, appealed the Planning Director's decision denying  
6                   the proposed Subdivision, Case File No. SB 2002-0010. A  
7                   decision for action shall be based upon the Subdivision approval  
8                   criteria listed in Development Code Section 40.75.15.1.C.3.  
9

10                  Commissioner Barnard declared that his home is in close proximity to  
11                  this proposed development, adding that he had been notified of and  
12                  attended the first Neighborhood Meeting.  
13

14                  Chairman Voytilla stated that he had been directly involved in the  
15                  design, planning, and construction of the residences associated with  
16                  two properties which are adjacent to the proposed development. He  
17                  pointed out that while he is quite familiar with the area,  
18                  transportation issues, and topography related to the site, he has no  
19                  financial interest or ability to benefit by reviewing this proposal.  
20

21                  Referring to a letter that had been submitted by the public,  
22                  Commissioner Maks disclosed that the letter from Darrin Hohn is on a  
23                  Sussman, Shank letterhead, adding that Jerome Shank is a direct  
24                  relation to his wife, adding that this would not affect his ability to  
25                  make a fair and impartial decision on this matter.  
26

27                  Commissioner Maks stated that he had visited the site and had no  
28                  contact with any individual(s) with regard to these applications.  
29

30                  Observing that he lives near and is familiar with the site,  
31                  Commissioner Pogue stated that he had also visited the site and had  
32                  no contact with any individual(s) with regard to these applications.  
33

34                  Commissioner Barnard stated that he lives in the area and is very  
35                  familiar with the site.  
36

37                  Pointing out that he is familiar with the site, Chairman Voytilla noted  
38                  that he had visited the site and had no contact with any individual(s)  
39                  with regard to these applications.  
40

41                  Commissioner Johansen mentioned that he had visited the site on two  
42                  separate occasions, adding that he had not had any contact with any  
43                  individual(s) with regard to these applications.

1 Commissioner Winter stated that he had visited the site and had no  
2 contact with any individual(s) with regard to these applications.

3  
4 Commissioner Bliss noted that he had visited the site and had no  
5 contact with any individual(s) with regard to these applications.

6  
7 Chairman Voytilla discussed the protocol with regard to this Public  
8 Hearing, including time limitations, as follows:

- 9  
10 ➤ Applicant's team – 20 minutes  
11 ➤ Individual members of the public – three minutes  
12 ➤ NAC Representative – five minutes

13  
14 Observing that speakers would be called upon based upon the  
15 testimony cards that are completed and submitted, Chairman Voytilla  
16 explained that these yellow cards are located on the table at the back  
17 of the room near the door. He pointed out that any letters that have  
18 been submitted have been read by all members of the Planning  
19 Commission, emphasizing that it is not necessary for anyone who  
20 testifies to read their letter aloud. Emphasizing that this Public  
21 Hearing specifically addresses applicable criteria that is listed within  
22 each individual Staff Report, he noted that any challenges with regard  
23 to the credibility or studies referenced by either staff or the applicant  
24 must be based upon appropriate credentials and documentation.

25  
26 Associate Planner Scott Whyte presented the three Staff Reports, all  
27 dated December 4, 2002, and provided a brief description of the various  
28 materials and information that has been provided with regard to this  
29 proposal and related applications. He provided a brief overview of the  
30 materials that have been submitted for review, and entered into the  
31 record several exhibits submitted by the public with regard to this  
32 proposal, including a letter from Friends of Cooper Mountain, dated  
33 December 5, 2002, and an e-Mail from Luanne Alomair, dated  
34 December 9, 2002. He discussed the history of the applications,  
35 including the Planning Director's October 18, 2002 denial of the  
36 Subdivision (SB 2002-0010), which was appealed by the applicant  
37 (APP 2002-0012).

38  
39 Mr. Whyte discussed issues with regard to the cul-de-sac, and ingress  
40 and egress to the site, observing that an earlier site circulation plan  
41 had not been approved by Washington County, resulting in a proposal  
42 by the applicant for other mitigation measures. He explained that  
43 Washington County had identified two of seven mitigation options as  
44 acceptable, adding that these options are highlighted within the Staff

1 Report. He introduced Senior Transportation Engineer Randy Wooley,  
2 who is available to address specific questions with regard to these  
3 options, noting that staff has determined that while both of these  
4 options provide feasible mitigation measures, there is a preference for  
5 the implementation of one option, which includes improvements to the  
6 site distance deficiency at the intersection of SW Spellman Drive and  
7 SW 170<sup>th</sup> Avenue. Observing that this intersection is located within  
8 the jurisdiction of Washington County, he pointed out that the appli-  
9 cant would be required to seek proper approvals through that entity.

10  
11 With respect to the Appeal of the Planning Director's decision to deny  
12 the Subdivision, Mr. Whyte recommended that the Planning  
13 Commission reverse this decision for denial and approve the proposal.  
14 Expressing his opinion that the applicant has addressed issues that  
15 had caused this denial, he suggested that the Planning Commission  
16 also adopt the Facilities Review document dated October 16, 2002,  
17 with the exception to the findings provided in response to Criterion No.  
18 2, which should be modified based upon the findings provided in the  
19 Staff Report prepared for the Appeal.

20  
21 Referring to the application for a Conditional Use Permit for a Planned  
22 Unit Development, Mr. Whyte pointed out that deviations from specific  
23 site development requirements and a mixture of combinations of  
24 residential, commercial, and industrial uses is allowable, subject to  
25 provisions of the Comprehensive Plan as long as the general purpose  
26 for the requirements are achieved and the general provisions of the  
27 zoning regulations are observed. He explained that with this  
28 application, there are some deviations to the R-5 zoning district  
29 standards, which he identified, as follows:

- 30  
31 1. **Lot size.** The lot sizes will vary, with the smallest lot  
32 being approximately 3,600 square feet in size, and the  
33 largest lot being approximately 15,000 square feet in size;  
34  
35 2. **Standard setbacks.** The applicant is requesting a  
36 reduced side yard setback from five to three feet.  
37 Referring to a necessary correction to the Staff Report, he  
38 pointed out that the rear yard setback is 25 feet, rather  
39 than 20 feet, adding that the applicant is requesting a  
40 reduced rear yard setback of 15 feet, with an exception  
41 that decks would be permitted to extend to up to five feet  
42 from the rear property line.  
43 3. **Creation of open space tracts.** Observing that a  
44 portion of the site is located within a Significant Natural

1 Resource Area, he noted that it is also located within  
2 what he referred to as a vegetated Corridor, as described  
3 by Clean Water Services regulations. He pointed out that  
4 a Significant Tree Grove is also located within this site,  
5 adding that this would be discussed with regard to the  
6 Tree Preservation Plan.  
7

8 Mr. Whyte described proposed Deed Restrictions, observing that the  
9 owners of these tracts would be bound by restrictions that would prohi-  
10 bit certain activities within the open space tracts, adding that this  
11 would be addressed within the Planned Unit Development approval.  
12 Observing that these restrictions are very similar to the CC&R's that  
13 are in effect at Bishop Ridge, which is the subdivision that is located  
14 just to the south and southeast of the subject site, he explained that  
15 staff is also recommending the formation of a Homeowner's Association  
16 as a Condition of Approval for the Planned Unit Development.  
17

18 Referring to the Tree Preservation Plan, Mr. Whyte emphasized that  
19 this is necessary due to the Significant Tree Grove (NX1) that has been  
20 identified on the site. He discussed the requirements for approval of a  
21 Tree Preservation Plan, observing that trees can be removed for  
22 various reasons, including trees that are diseased, trees that pose a  
23 safety hazard, and trees that are in the way for construction purposes.  
24 Pointing out that staff generally agrees with the applicant's assertions  
25 with regard to the trees proposed for removal, he noted that in review  
26 of the development plan, including the grading plan, staff had deter-  
27 mined that certain trees, beyond those identified for preservation,  
28 could potentially be preserved. He referred to Exhibit 8, prepared by  
29 City Arborist Pat Hoff, adding that Mr. Hoff is available to respond to  
30 questions with respect to this Tree Preservation Plan. He recom-  
31 mended that the proposed Tree Preservation Plan be amended to  
32 include the list of trees identified within Exhibit 8. With regard to the  
33 fencing, he referred to a letter submitted by the Bishop Ridge Home-  
34 owner's Association, adding that staff concurs with this petition signed  
35 by several residents requesting the installation of a vinyl-coated type  
36 of fence, specifically with regard to the lots that back up to the vegetat-  
37 ed Corridor within the Significant Natural Resource Area, basically for  
38 delineation purposes. Concluding, he offered to respond to questions.  
39

40 Commissioner Maks referred to Condition of Approval No. 2 with  
41 regard to the Conditional Use Permit for the Planned Unit  
42 Development, requesting clarification of whether there should be a  
43 correction to the wording of one of the Conditions of Approval.  
44

1 Mr. Whyte concurred with regard to the correction proposed by  
2 Commissioner Maks.

3  
4 Commissioner Maks questioned whether the number in Condition of  
5 Approval No. 9 should be revised from 20 to 25.

6  
7 Mr. Whyte agreed with revising the number in Condition of Approval  
8 No. 9 from 20 to 25.

9  
10 Commissioner Maks requested information with regard to how much of  
11 this site is actually buildable and how much of the site is unbuildable.

12  
13 Mr. Whyte referred to Tract Nos. C through V, which are located  
14 behind Lot Nos. 46 through 64, adding that this boundary is quite  
15 specific to the grading accepted by Clean Water Services and is fairly  
16 representative of the Corridor and buffer areas that are required,  
17 emphasizing that this entire area is considered unbuildable. He  
18 pointed out that several other tracts are not actually subject to review  
19 by Clean Water Services, noting that Lots 10 through 12 on the north  
20 property line includes some small tracts that contain trees as well as  
21 significant slopes, adding that it is questionable whether these tracts  
22 would be developable. He referred to several other small tracts located  
23 on the western edge of the site, west of SW Red Rock Way, noting that  
24 these larger lots, specifically Lots 66 through 68, also include some  
25 very small tracts that may be considered buildable more as an  
26 extension of those lots.

27  
28 Referring to page 19 of the Planned Unit Development Staff Report,  
29 Commissioner Maks pointed out that while staff has identified the  
30 minimum density as 58 and maximum density as 73, the applicant, on  
31 page 3, has identified a minimum density of 64 and maximum density  
32 of 80.

33  
34 Mr. Whyte advised Commissioner Maks that staff's calculations are  
35 correct, adding that the applicant has identified the appropriate  
36 density calculations on Sheet 1, which identifies 58 units as the  
37 minimum and 73 units as the maximum.

38  
39 Commissioner Maks referred to page 17 of the Planned Unit  
40 Development Staff Report, and questioned why the maintenance of  
41 these tracts are the responsibility of the homeowner rather than  
42 dedicating this property to Tualatin Hills Parks & Recreation  
43 Department (THPRD), the Friends of Johnson Creek, or the Sierra  
44 Club. He pointed out that his site visit had made him aware that



1 many of the residents of Bishop's Ridge are not complying with their  
2 Deed Restrictions, adding that these restrictions are only enforceable  
3 through a lawsuit.

4  
5 Mr. Whyte advised Commissioner Maks that the applicant should  
6 address the majority of these issues, expressing his opinion that this  
7 emphasizes the need for a Homeowner's Association, as suggested by  
8 staff.

9  
10 Commissioner Maks questioned whether a Neighborhood Route is  
11 expected to handle between 1,700 and 2,200 ADT's.

12  
13 Senior Transportation Engineer Randy Wooley explained that the  
14 Engineering Design Manual within the Development Code indicates  
15 between 1,000 and 5,000 as a typical range for Neighborhood Routes.

16  
17 Referring to page 45 of the Planned Unit Development Staff Report,  
18 Commissioner Maks referred to the Facts and Findings within Section  
19 40.05.15.C.3, which states that within the western portion of the site,  
20 the applicant proposes larger lots to provide consistency with the size  
21 of single-family residential lots in the surrounding area, and requested  
22 clarification of which lots this concerns.

23  
24 Mr. Whyte advised Commissioner Maks that this involves Lots 66, 67,  
25 68, and 69, which actually includes an existing house.

26  
27 Referring to the Facilities Review Conditions of Approval,  
28 Commissioner Maks stated that this particular Condition of Approval  
29 has been changed in the past to provide for a chain-link construction  
30 fence a minimum of six feet in height, to be identified with bright-  
31 colored flagging, adding that the phrase "or other approved height of  
32 construction fencing" has been deleted. He emphasized that a section  
33 has also been included providing that no storage shall be allowed  
34 within the fenced area. He referred to Condition of Approval No. 8,  
35 which provides that site grading is to be accomplished in accordance  
36 with the preliminary grading plan, and that deviations greater than  
37 one foot will require modification of this Planned Unit Development  
38 approval. He explained that the applicant might wish to change the  
39 grade by 13 inches, and questioned why he should be required to spend  
40 a Wednesday evening reviewing this type of a modification to a  
41 Planned Unit Development.

42  
43 Mr. Whyte explained the rationale for this particular Condition of  
44 Approval, emphasizing that because the proposed grade is right up to

1 the vegetated Corridor limits at this time, any significant change could  
2 encroach upon the tract boundaries. He pointed out that a change in  
3 grading could also potentially affect the height of the proposed  
4 retaining walls, and referenced similar issues that created problems at  
5 Sterling Park.

6  
7 Commissioner Maks concurred with Mr. Whyte's explanation, and  
8 requested clarification with regard to the two proposed methods of  
9 mitigation for the site issues that had been determined acceptable by  
10 Washington County, specifically whether the reduction to the grade on  
11 SW 170<sup>th</sup> Avenue is acceptable to staff with regard to proportionality.

12  
13 Mr. Wooley noted that this proposed reduction to the grade on SW  
14 170<sup>th</sup> Avenue is fairly minor, adding that the applicant has indicated  
15 that they have performed additional fieldwork and feel comfortable  
16 with that particular Condition of Approval.

17  
18 Commissioner Johansen referred to page 14 of the Planned Unit  
19 Development Staff Report, observing that there appears to be a bit of a  
20 conflict within the Development Code, noting that while the Planning  
21 Director may require an Economic Feasibility Study, the Planned Unit  
22 Development is determined feasible based upon a market study and  
23 other evidence of financial feasibility.

24  
25 Mr. Whyte explained that a Planned Unit Development could involve a  
26 mixed-use type of application, including residential, commercial, and  
27 Industrial components. Observing that any questionable use might  
28 require a market study, he noted that in this case, because the Single-  
29 Family Residential is consistent with the neighborhood as a whole, a  
30 market study was neither required nor provided. He pointed out that  
31 the Development Code does not actually define what the market study  
32 is, expressing his opinion that this might simply involve a written  
33 statement from a market expert verifying the feasibility of a particular  
34 development.

35  
36 Commissioner Johansen questioned whether Washington County has  
37 formerly approved either of the two preferred options, including a  
38 detailed description of what these options involve.

39  
40 Mr. Whyte advised Commissioner Johansen that Washington County  
41 has specifically cited the Memorandum from *Kittelson & Associates*,  
42 dated November 13, 2002, which identifies the seven options that have  
43 been narrowed down to two, adding that all individual details would  
44 require approval. He explained that staff has proposed some

1 Conditions of Approval that would require approval by Washington  
2 County, noting that staff is forwarding a recommendation of preference  
3 for one option over the other option, specifically the option that reduces  
4 the grade on SW 170<sup>th</sup> Avenue.  
5

6 Mr. Wooley referred to a Condition of Approval that requires that  
7 permits be issued by Washington County prior to approval of the  
8 development plans by the City of Beaverton.  
9

10 Commissioner Winter referenced Commissioner Maks' question with  
11 regard to tracts, specifically page 15 of the Conditional Use Permit  
12 Staff Report, and questioned whether the proposed Homeowner's  
13 Association would override the specification that open space not be  
14 commonly owned.  
15

16 Mr. Whyte stated that the entire section discusses common open space,  
17 adding that this property would not be held in common.  
18

19 Commissioner Winter pointed out that there appears to be a  
20 substantial amount of unowned or uncontrolled space, including tracts  
21 and fences for which nobody seems to be responsible.  
22

23 Mr. Whyte agreed that no enforcement mechanism has been proposed  
24 by the applicant, adding that this reinforces the necessity of a  
25 Homeowners' Association.  
26

27 Referring to page 35 of the Conditional Use Permit Staff Report,  
28 specifically Goal 6.2.5.C, which addresses Transportation Facilities,  
29 Commissioner Winter noted that the proposed closure of a road is a  
30 measure of last resort, and requested clarification of whether the  
31 proposed temporary gates would or would not close SW 166<sup>th</sup> Avenue  
32 for access purposes.  
33

34 Mr. Wooley clarified that the history of this goal is actually intended to  
35 defer the closure of an existing road that is currently open and then  
36 reclose it, adding that because the road is not there at this time, this  
37 would basically delay the opening of the road.  
38

39 Commissioner Winter referred to page 16 of the Appeal Staff Report,  
40 with regard to the role of Tax Lot 600, and requested clarification of  
41 the statement that staff also believes that it should be made very clear  
42 that the applicant's conceptual plan layout for Tax Lot 600 is only  
43 conceptual in design.  
44

1 Mr. Whyte mentioned the importance of providing at least 75% of the  
2 cul-de-sac within the subject site, observing that Tax Lot 600 is a  
3 rather small lot, the future partition of which is conceptual in nature  
4 and does not involve a full development plan for review at this time.  
5

6 Chairman Voytilla referred to Condition of Approval No. 3.B for the  
7 Conditional Use Permit, which provides a great deal of detail with  
8 regard to what can not be done, adding that the biggest problem he  
9 had experience with similar projects had been builders pushing off  
10 their soil from their excavation into these areas. He emphasized that  
11 it is necessary to specifically address the issue of grading. Referring to  
12 Condition of Approval No. 3.D for the Conditional Use Permit, he  
13 stated that he is not certain with regard to when the applicant has  
14 proposed to place this chain link or wooden fence. He expressed his  
15 opinion that it would make sense to place this fence prior to the  
16 issuance of the Building Permits for the houses.  
17

18 Commissioner Johansen requested confirmation of both Spellman  
19 Drive and Red Rock Way with regard to Neighborhood Routes on the  
20 Functional Classification Map.  
21

22 Mr. Wooley stated that he believes that Red Rock Way is a  
23 Neighborhood Route while Spellman Drive is a local street.  
24

25 Commissioner Maks pointed out that both Red Rock Way and  
26 Spellman Drive are Neighborhood Routes.  
27

28 Mr. Wooley reiterated that Red Rock Way and SW 166<sup>th</sup> Avenue is the  
29 Neighborhood Route and that Spellman Drive is a Local Street,  
30 emphasizing that Spellman Drive is located outside of the City of  
31 Beaverton and falls under the jurisdiction of Washington County.  
32

33 Commissioner Johansen requested information with regard to the  
34 width of Red Rock Way as it relates to the standards of Neighborhood  
35 Routes.  
36

37 Mr. Wooley advised Mr. Johansen that Red Rock Way is 28 feet in  
38 width, from curb to curb, noting that this is one of the standards for  
39 neighborhood routes, although parking is intended only on one side of  
40 this street.  
41

42 Chairman Voytilla briefly discussed the procedure for testimony with  
43 regard to both the applicant and the public, observing that the  
44 applicant would be permitted 20 minutes for their presentation. He

1 explained that this would be followed by public testimony, noting that  
2 each individual would be allowed three minutes.

3  
4 **APPLICANT:**

5  
6 **PHIL GRILLO** introduced himself and members of his team,  
7 including Alan DeHarpport and Dave DeHarpport, and discussed the  
8 input of the neighbors, adding that the materials presented reflect how  
9 this project has changed over time, including a reduction in the  
10 number of units. He expressed his appreciation to staff, specifically  
11 Mr. Sparks, Mr. Whyte, and Mr. Cooper, as well as the Sexton  
12 Mountain Neighborhood Association, Friends of Cooper Mountain, and  
13 other groups, adding that they had worked together as amicably as  
14 possible in such a situation.

15  
16 Mr. Grillo provided illustrations of the site with regard to its location  
17 within the City of Beaverton, as well as aerial photographs, and  
18 discussed proposed expansion areas to the Urban Growth Boundary.

19  
20 **LAURIE WALL** distributed copies of a letter, dated December 11,  
21 2002, prepared by the applicant.

22  
23 **ALAN DeHARPPORT** discussed potential damage to the tree root  
24 systems, adding that he concurs with staff's recommendations with  
25 regard to this issue.

26  
27 Observing that this wraps up the applicant's presentation, Mr. Grillo  
28 stated that he intends to provide further comments during the  
29 rebuttal.

30  
31 Commissioner Maks requested a two-minute synopsis of why the  
32 applicant prefers to avoid the creation of a Homeowner's Association.

33  
34 Mr. Grillo explained that deed restrictions potentially create conflicts  
35 with some forms of public policy, pointing out that Lake Oswego had  
36 deed restrictions preventing properties from being sold to minorities at  
37 one point, adding that these restrictions have been voided because they  
38 conflicted with public policy.

39  
40 Commissioner Maks referred to pages 6 and 7 of the applicant's sub-  
41 mittal for the Conditional Use Permit, observing that if the applicant  
42 were basing the minimum/maximum upon net buildable land, he  
43 would like clarification with regard to how the density is transferred.  
44

1 Mr. Grillo discussed the method through which the City of Beaverton  
2 calculates density, adding that the difficult issue is that in addition to  
3 subtracting beyond what has been originally anticipated for roads,  
4 areas in open space are also removed.

5

6 Commissioner Maks requested further clarification of Item C on page 7  
7 of the applicant's submittal for the Planned Unit Development, which  
8 states that inventoried natural resources shall be incorporated into the  
9 landscape design of development projects as part of site development  
10 plan, recognizing them as amenities for residents and employees alike.

11

12 Mr. Grillo stated that inventoried natural resources are actually Goal  
13 5 Inventory Natural Resources, adding that he does not believe that  
14 Significant Grove NX-1 was actually involved in the Goal 5 Inventory.  
15 He explained that this is the area that is located within the Significant  
16 Natural Resource Area of the site, noting that this has been  
17 incorporated into the landscape design of the development through  
18 preservation efforts.

19

20 Observing that the area will be protected and preserved in its existing  
21 condition, providing green space, wildlife habitat, and visual relief,  
22 Commissioner Maks requested a definition of the term visual relief.

23

24 Mr. Grillo described visual relief as separation between the properties,  
25 observing that the green space of the site would provide visual relief,  
26 rather than a view of the built environment of the back of other  
27 properties. Noting that the applicant had conducted a background  
28 research with regard to the history of this area in terms of vegetation,  
29 he pointed out that the area on which the houses are proposed is  
30 historically the area that had been logged. He emphasized that the  
31 actual resource area is an area that the applicant intends to protect,  
32 and provided pictures reinforcing his comments.

33

34 Commissioner Maks referred to page 11 of the Staff Report, with  
35 regard to the criteria of compatibility, requesting clarification of the  
36 average lot sizes of the adjacent properties.

37

38 Ms. Wall distributed copies of aerial photographs illustrating the site.

39

40 Commissioner Maks referred to page 14 of the applicant's submittal,  
41 which states that a limited number of houses will require three-foot  
42 setbacks on the side and fifteen-foot setbacks on the rear, emphasizing  
43 that apparently his definition of limited is different from that of Mr.  
44 Grillo.

1 Mr. Grillo advised Commissioner Maks that he accepts full  
2 responsibility for that error, assuring him that this was not a  
3 deliberate attempt to mislead.

4

5 Commissioner Maks stated that he does not understand the rationale  
6 with regard to the rear yard and side yard setbacks, particularly  
7 because this involves homes that are not adjacent to the Significant  
8 Natural Resource Area.

9

10 Mr. Grillo stated that the general rationale for this is because the  
11 applicant is attempting to construct substantial homes that will fit in  
12 with the character of the existing neighborhood, which in essence lends  
13 itself to a slightly larger footprint, adding that these homes would be  
14 more compatible with the homes in the surrounding area in terms of  
15 volume, size and design. He explained that due to the CC&R's, five of  
16 the lots are approximately 15,000 square feet in size, which he referred  
17 to as estate lots. Observing that approximately 18 of the lots are  
18 between 5,000 and 15,000 square feet in size, he pointed out that these  
19 are large lots in the standard R-5 zoning district. He mentioned that  
20 21 of the lots that are primarily associated with large open space tracts  
21 are what he considers to be standard size plus lots, adding that these  
22 lots would appear to be much larger than 5,000 square feet in size,  
23 except for the fence in the area. He emphasized that 44 of the 69 lots  
24 would be much larger than 5,000 square feet, if area contained within  
25 individual tracts were added. He added that of the remaining 25 lots,  
26 11 are between 4,700 and 5,000 square feet, which is only 300 or less  
27 square feet lower than the 5,000 square feet and would be visually  
28 imperceptible to most people.

29

30 Mr. Alan DeHarpport clarified that the applicant had essentially  
31 minimized the lot sizes in an effort to preserve the open space, obtain  
32 density, and to keep the road as far from open space as feasible while  
33 producing lots on the downhill side of the road. He emphasized that  
34 approximately 82 feet had been the minimum amount possible the  
35 applicant could get away with, adding that the standard setbacks of 20  
36 and 25 feet would leave less than a 45-foot deep building pad, which  
37 would not be compatible with the surrounding neighborhood.

38

39 Commissioner Maks referred to Mr. Vandehey's statement dated  
40 November 22, 2002, as contained in the Kittleson Study, and  
41 questioned the Average Daily Traffic Volumes for collector streets  
42 within the City of Beaverton.

43

1       **MARK VANDEHEY**, representing Kittelson & Associates, discussed  
2       the Average Daily Traffic Volumes, adding that his report had been  
3       basically identifying the national perspective with regard to collector  
4       facilities, which typically carry volumes between 3,000 and 10,000  
5       ADT.

6  
7       Referring to the tracts proposed for open space, Chairman Voytilla  
8       requested clarification with regard to any discussion with other parties  
9       regarding their potential merits, and specifically with whom this was  
10      discussed.

11  
12      Mr. Grillo pointed out that Tualatin Valley Parks & Recreation  
13      District had not been interested in this situation, adding that he also  
14      doubts that the City of Beaverton would want to participate.

15  
16      Mr. Alan DeHarpport stated that only Tualatin Valley Parks &  
17      Recreation District had been contacted, reiterating that they had not  
18      been interested.

19  
20      Chairman Voytilla emphasized that there are other organizations that  
21      could be contacted, adding that Commissioner Maks had listed several.

22  
23      Mr. Grillo stated that the applicant would be willing to contact other  
24      organizations with regard to this issue.

25  
26      Chairman Voytilla questioned how the applicant proposes to prevent  
27      the contractors or future purchasers from utilizing the common areas  
28      for dumping their debris.

29  
30      Mr. Grillo pointed out that while this is definitely a concern, requiring  
31      the installation of fencing prior to the issuance of Building Permits  
32      should address this issue, adding that he has no objection to increasing  
33      the height of the proposed fence.

34  
35      Chairman Voytilla mentioned that in the past, he has held out some of  
36      the builder's funds in escrow until the project was completed.

37  
38      Mr. Grillo expressed his opinion that this is a feasible option, adding  
39      that this should at least provide some form of a deterrent. He  
40      explained that Clean Water Services' Service Provider Letter states  
41      that prior to any site clearing, grading, or construction, the vegetated  
42      corridor and water quality sensitive areas shall be surveyed, staked,  
43      and temporarily fenced per approved plan, and that during  
44      construction, the vegetated corridor shall remain fenced and



1       undisturbed, except as allowed by Section 30.24.B.4 and per approved  
2       plans.

3  
4       Chairman Voytilla noted that staff's conditions do not provide that  
5       amount of detail, adding that this should be included within the Deed  
6       Restrictions as well.

7  
8       Chairman Voytilla requested clarification with regard to the removal  
9       of a particular tree the City Arborist had suggested for preservation.

10  
11       **WALT KNAPP**, Arborist/Forester for the applicant, stated, on  
12       question, that the drip line extends approximately 12-feet from the  
13       center of this 17-inch diameter Douglas Fir tree.

14  
15       Chairman Voytilla requested information with regard to homeowner's  
16       insurance within this development.

17  
18       Mr. Grillo expressed his opinion that most homeowner's insurance  
19       would cover any owned tract, adding that the more difficult issue  
20       involves insurance covered by any Homeowner's Association who owns  
21       or has a common interest in a common area.

22  
23       Chairman Voytilla pointed out that a tree could blow onto an adjacent  
24       property during a windstorm and cause damage, adding that any  
25       maintenance responsibility would transfer to an individual lot owner.  
26       He also suggested the possibility of a child getting hurt while playing  
27       in the creek.

28  
29       Mr. Grillo noted that in this situation where the area is fence off and  
30       children are not to be in that area, unless there is some sort of  
31       attractive nuisance, this situation would be at the child's own risk, and  
32       pointed out that he is not qualified to determine whether any  
33       additional risk would be involved.

34  
35       Commissioner Maks expressed his opinion that Mr. Voytilla had raised  
36       some very good points, noting that he had observed both fallen trees  
37       and a child's toy on the property.

38  
39       Commissioner Bliss discussed the issue of the minimum setback  
40       reduced to within 15-feet with the deck coming to within five-feet,  
41       expressing his opinion that this is neither compatible nor livable. He  
42       expressed his opinion that any unassigned property becomes the area  
43       where debris accumulates within any neighborhood.

44

1 Commissioner Johansen mentioned the approval criteria for Planned  
2 Unit Developments, specifically No. 3, which states that the Planned  
3 Unit Development is financially feasible based on a market study and  
4 other evidence of financial feasibility, and questioned whether the  
5 applicant feels that this market study and evidence of financial  
6 feasibility has been provided.

7

8 Mr. Grillo advised Commissioner Johansen stated that he does not  
9 believe that this document has been provided by the applicant, adding  
10 that this is because the direction and interpretation from staff had not  
11 indicated that this was necessary. He emphasized that the applicant  
12 is willing to provide this documentation, if requested, suggesting that  
13 the record could be kept open for a period of time to allow for the  
14 submittal of this information.

15

16 Mr. Alan DeHarpport requested clarification with regard to what type  
17 of financial feasibility documentation had been provided for The  
18 Round, adding that he would like some direction indicating what type  
19 of information and detail is required. He expressed his opinion that  
20 the applicant team's statement indicating that the project is feasible  
21 should be sufficient, noting that the applicant had received this  
22 direction from staff.

23

24 Commissioner Maks pointed out that in the past, a bank letter indicat-  
25 ing support for credit has been accepted, adding that Morrisette had  
26 provided information with regard to the sale of homes of a certain size.

27

28 Mr. Alan DeHarpport stated that the applicant is willing to provide  
29 this information.

30

31 Commissioner Pogue expressed concern with the topography and  
32 potential tunnel effects to a future homeowner, and questioned how  
33 the applicant had considered this situation in reviewing the lot sizes  
34 and proposed plans.

35

36 Mr. Alan DeHarpport emphasized that while the applicant would like  
37 larger lots, the situation is driven by minimum density requirements  
38 that have determined how Washington County is developing, adding  
39 that no problems with marketing is anticipated.

40

41 Mr. Grillo explained that the situation involves the fact that there is  
42 not a great deal of room to move before dealing with minimum density  
43 issues.

44

1 9:28 p.m. to 9:41 p.m. – recess.  
2

3 **PUBLIC TESTIMONY:**  
4

5 **GARY IMBRIE** expressed concern that there had been no discussion  
6 of potential safety aspects of the ingress/egress at the intersection of  
7 SW Spellman Drive and SW Red Rock Way, emphasizing that there  
8 are some very significant issues to consider. He pointed out that with  
9 no sidewalks on SW Spellman Drive, the amount of traffic that would  
10 be generated would create a significant safety problem, particularly  
11 with regard to the large number of children living in the area. He  
12 questioned why access to SW Nora Road has not been considered as a  
13 possibility, adding that he anticipates that engineering reports  
14 submitted later in testimony would indicate that this is a feasible and  
15 logical option.  
16

17 **DAVID COOK** stated that he has discussed this situation at great  
18 length with the residents of the area, adding that they are all very  
19 upset for various reasons, including safety, and ingress/egress, as well  
20 as a particular health issue that has not been addressed. Expressing  
21 his opinion that this entire process has been disappointing up until  
22 this evening, he pointed out that he has witnessed a great deal of input  
23 and judicial behavior at this hearing. He discussed the diesel trucks  
24 and traffic that would be traveling up the hill, emphasizing that  
25 because the State of Oregon does not require any type of pollution  
26 control devices, the residents would be exposed to the inhalation of  
27 substances that potentially cause cancer.  
28

29 Chairman Voytilla requested which criteria specific to this application  
30 Mr. Cook is addressing at this time.  
31

32 Mr. Cook advised Chairman Voytilla that he is focusing on the fact  
33 that there is a very strong case that could be raised by the residents  
34 that this traffic should be routed up SW Nora Road, emphasizing that  
35 this proposal creates some health implications to families residing on  
36 SW Red Rock Way.  
37

38 Chairman Voytilla reiterated that specific criteria identified within the  
39 Staff Report must be identified and addressed.  
40

41 Mr. Cook referred to Goal 5 posted on the wall of the Council  
42 Chambers, which states to assure a safe and healthy community.  
43

1 Chairman Voytilla advised Mr. Cook that this goal does not apply as  
2 appropriate criteria with regard to these specific applications.

3  
4 Mr. Cook emphasized that this is a significant issue and that the  
5 Planning Commission should accept responsibility, adding that the  
6 children and elderly residents of the area would be at significant risk  
7 due to this potential pollution. He pointed out that home values are  
8 also at risk, adding that the proposal is very inconsistent with the  
9 existing neighborhoods in the area, expressing his opinion that  
10 information provided by the applicant, particularly with regard to lot  
11 calculations, is very misleading.

12  
13 Commissioner Johansen clarified that any public testimony or  
14 comments has to relate to the criteria upon which the Planning  
15 Commission is required to make a decision.

16  
17 Chairman Voytilla explained that each Staff Report for each individual  
18 application addresses separate criteria and would receive a separate  
19 decision.

20  
21 Mr. Cook stated that while he does not intend to appear facetious, it  
22 would have been wonderful to have access to this information in order  
23 to prepare a statement prior to testifying.

24  
25 Chairman Voytilla advised Mr. Cook that all Staff Reports are a  
26 matter of public record, adding that they are available for review seven  
27 days prior to the scheduled hearing.

28  
29 **DOROTHY MEEKS** stated that her concerns had been addressed  
30 during prior testimony.

31  
32 **LINDA MacCOY** expressed concern with pedestrian and vehicle  
33 safety, livability, development of the neighborhood, and marketability,  
34 adding that because she is involved in real estate lending, her  
35 professional opinion is that constructing these smaller homes on  
36 smaller lots that are so different from the existing homes would  
37 depreciate the value of the homes in that area.

38  
39 **MARIANNE THELIN** stated that she is a real estate broker, adding  
40 that while she has no objection to development and agrees that it  
41 needs to occur, she is concerned with safety issues related to traffic and  
42 speed.

43

1       **JORGE CARBO** stated that he is new to the area, adding that while  
2       he had moved here because of a sense of community, he is very aware  
3       that it will change. He expressed his concern with traffic problems and  
4       lack of sidewalks, emphasizing that there is a great deal of potential  
5       for accidents in the area and that this development does not belong in  
6       this neighborhood. Observing that he is a survivor of the Oakland fire,  
7       he pointed out that as a professional firefighter, the proposed setbacks  
8       would create what he considers a potential fire hazard.

9  
10       Chairman Voytilla called **LORRAINE DAVIS** to testify, and noted  
11       that she had left the hearing.

12  
13       **DAVID STEIN** questioned whether he could utilize Ms. Davis' time.

14  
15       Following a brief discussion, Chairman Voytilla, the Commissioners  
16       agreed that while combined time is not allowed, Mr. Stein could testify  
17       for five minutes.

18  
19       Mr. Stein described his concerns and made suggestions with regard to  
20       density, environmental issues, the development pattern, and traffic  
21       issues.

22  
23       **BETH WATERMAN-HUKARI** stated that her two concerns involve  
24       safety and the steepness of SW Spellman Drive, which she described as  
25       a 10% to 12% grade. Observing that children travel up and down this  
26       road on a daily basis, she emphasized that there are no streetlights or  
27       sidewalks. Referring to the four homes located on the abutment of the  
28       project on SW 166<sup>th</sup> Avenue, she pointed out that it is necessary to  
29       negate issues with regard to the septic lines. She expressed concern  
30       with how this situation would be monitored and by whom, adding that  
31       she expects some response with regard to this issue.

32  
33       **MO BARADAR** pointed out that as the owner of the property selling  
34       Christmas trees on SW 155<sup>th</sup> Avenue, he not opposed to development,  
35       adding that it is necessary to respect the integrity of the neighborhood,  
36       the land, and the project itself. He discussed the development of other  
37       properties and inappropriate situations that sometimes occur following  
38       approval of a project.

39  
40       Advising Mr. Baradar that his three minutes have expired, Chairman  
41       Voytilla directed him to wrap up his testimony.

42  
43       Mr. Baradar discussed problems he had experienced due to  
44       development abutting his own property.

1        **JIM VanOSDELL** submitted orange folder containing a letter dated  
2        December 11, 2002, from himself and Celeste Kirk and documents with  
3        regard to safety issues on Spellman Drive to be entered into the record,  
4        emphasizing that he is not opposed to intelligent development. He  
5        discussed the subject site, which he described as very steep,  
6        emphasizing that the potential for roadways and development is not as  
7        great as the applicant has indicated. He pointed out that SW  
8        Spellman Drive is not designed to hold heavy traffic such as the large  
9        trucks that would be bringing in construction materials, adding that  
10       he is curious with regard to who would maintain and repair any  
11       potential damage. He mentioned the issue of ice on the road, as well  
12       as the potential for debris to be tossed over a fence, expressing his  
13       opinion that this site is a poor choice for development, adding that any  
14       traffic associated with this development should go out SW Nora Road.  
15       Concluding, he emphasized that he supports all of the statements and  
16       documents provided by the Friends of Cooper Mountain.

17  
18       **DAVID MOYLE** stated that he intends to focus on three points, as  
19       follows: 1. The planned development is not compatible with the R-5  
20       zoning district and does not meet applicable Planned Unit Develop-  
21       ment goals; 2. The planned development is not compatible with the  
22       existing neighborhoods; and 3. The planned development encroaches  
23       severely on the natural reserve and headwaters of Johnson Creek.

24  
25       Mr. Moyle pointed out that he found the creative math with regard to  
26       lot sizes very interesting, observing that 66% of the lots are actually  
27       less than 5,000 square feet in size, 31% of the lots are less than 4,000  
28       square feet in size, and that some of the homes would only be  
29       separated by a distance of six-feet. He expressed his opinion that this  
30       application is a gross misuse of a Planned Unit Development,  
31       emphasizing that this application is designed to result in a better use  
32       of the land than the existing R-5 development. He pointed out that the  
33       access roads are not compatible for high density, the lots and homes  
34       would be significantly smaller than neighboring homes, and no  
35       technological advances are being deployed for the benefit of this  
36       proposal. He explained that a Planned Unit Development is generally  
37       utilized for a development such as Orenco Station, adding that this is  
38       why the requirements provide for an economic analysis with regard to  
39       the mixed use of land. He discussed the potential encroachment upon  
40       the Significant Natural Resource Area, adding that there is a violation  
41       with regard to the minimum 35-foot buffer from a 25 degree slope, in  
42       addition to significant curb cutting and leveling as opposed to retaining  
43       trees and preserving the land in its natural state. Concluding, he  
44       requested that the current plans not be approved, suggesting that the

1 developer be required to provide a plan that meets the existing R-5  
2 zoning designation, is compatible with the existing neighborhoods, and  
3 provides for better protection of the Significant Natural Resource Area.  
4

5 Commissioner Maks requested that Mr. Moyle expand upon or define  
6 what meets the existing R-5 zoning designation.  
7

8 Mr. Moyle responded to Commissioner Maks, noting that a 5,000  
9 square foot lot average would be one criterion.  
10

11 Chairman Voytilla referenced Mr. Moyle's comment with regard to the  
12 Planned Unit Development criteria, observing that this proposed  
13 development is not in the same category as Orenco Station.  
14

15 Mr. Moyle expressed concern with lack of access to public  
16 transportation as well as the access roads, which are not set up for  
17 high-density housing.  
18

19 Chairman Voytilla clarified that the applicant is not proposing high  
20 density housing, adding that high-density housing involves multi-  
21 family development.  
22

23 Mr. Moyle responded to Chairman Voytilla, noting that the proposal  
24 does not involve R-5 development.  
25

26 **MARK RUNBERG** distributed copies of a letter, and discussed his  
27 concerns with the proposal, adding that he is opposed to the Planned  
28 Unit Development. He expressed his opinion that this development  
29 would not enhance the value, spirit, character, and integrity of the  
30 surrounding areas, adding that the proposal is not compatible with the  
31 existing neighborhoods. He also suggested that one proposed street be  
32 adjusted.  
33

34 **ED MULLERLEILE** stated that his concerns had been addressed.  
35

36 **LAWRENCE O'DONNELL** stated that his concerns had been  
37 addressed.  
38

39 **MARK HEREIM** distributed copies of a letter from the Friends of  
40 Beaverton/Johnson Creek, emphasizing that the proposal is not  
41 consistent with the goal of preserving natural resources on the site.  
42 He discussed concerns with erosion, pointing out that the referenced  
43 intermittent stream is actually a perennial stream as well as a  
44 headwater of Beaverton/Johnson Creek. He requested that Lots 48

1 and 60 through 64 be removed from the development plan, adding that  
2 this application should not be approved without clear and enforceable  
3 Conditions of Approval with regard to removing the development from  
4 the area of the steep slope and addressing protection and maintenance  
5 issues with regard to the natural area tracts.

6  
7 Commissioner Maks explained that the group represented by Mr.  
8 Hereim has worked in the past with other organizations with regard to  
9 wetlands enhancement along Johnson Creek.

10  
11 **KATHRYN SAYLES** stated that while the majority of her concerns  
12 had been addressed, she is still concerned with who will own those  
13 tracts that abut the stream. She requested that the record remain  
14 open to provide for an opportunity to contact Unified Sewerage Agency  
15 (Clean Water Services) to obtain further information with regard to  
16 this proposal.

17  
18 **APPLICANT REBUTTAL:**

19  
20 Mr. Grillo stated that in the interest of time constraints, he would like  
21 to address two or three specific issues in rebuttal. He pointed out that  
22 his first issue involves access and connectivity, while the second issue  
23 relates to setback and density concerns, adding that Mr. Vandehey  
24 would address the access issues.

25  
26 Mr. Vandehey stated that what is being proposed in what he referred  
27 to as the near term access plan, discussions with Washington County  
28 and the City of Beaverton had determined that the most appropriate  
29 alternative would be to install a gate on the northern access connection  
30 to SW 166<sup>th</sup> Avenue, adding that this would basically force all the  
31 traffic to SW Diamond Way. He explained that at that point, the  
32 traffic would route to SW 170<sup>th</sup> Avenue at SW Red Rock Way, adding  
33 that while this would not physically prevent any vehicle from turning  
34 right onto SW 166<sup>th</sup> Avenue, this would be obviously backtracking.

35  
36 Commissioner Maks requested clarification with regard to the 85<sup>th</sup>  
37 percentile speed on SW 170<sup>th</sup> Avenue.

38  
39 Observing that this had been measured in both directions, Mr.  
40 Vandehey clarified that in the northbound direction, the speed had  
41 been measured at 39 miles per hour, adding that in the southbound  
42 direction, the speed had been measured at 29 miles per hour.

43



1 On question, Mr. Alan DeHarpport informed Commissioner Johansen  
2 that Option Nos. 6 and 7 are both still under consideration, and that  
3 Option No. 7 would temporarily prevent the use of SW Spellman Drive  
4 with all traffic forced to use SW Red Rock Way.  
5

6 Mr. Grillo stated that Mr. Alan DeHarpport would discuss the related  
7 issues with regard to future connectivity as opposed to access, and  
8 referred to Exhibit No. 10, which he described as the overview of future  
9 access options to SW Nora Road, adding that five options have been  
10 identified.  
11

12 Mr. Alan DeHarpport discussed five potential options for providing  
13 future street connectivity to SW Nora Road, as follows:  
14

- 15 1. SW 166<sup>th</sup>, west out to SW Nora Road;
- 16 2. North from the existing SW Nora Road, which is a  
17 dedicated right-of-way;
- 18 3. North on the cul-de-sac on SW 164<sup>th</sup> Avenue;
- 19 4. Street stub at SW 163<sup>rd</sup> Avenue (Tax Lot 800); and
- 20 5. Mr. Stein's proposal, to go out the panhandle.  
21

22 Mr. Alan DeHarpport stated that the applicant team considers Option  
23 4, through Tax Lot 800, to be the most likely option, adding that this  
24 property is very developable, adding that to state that it is not is just  
25 not accurate. He observed that a creek crossing is required, adding  
26 that a 35-foot buffer to an intermittent stream would also need to be  
27 addressed, and noted that even with the open space removed, there  
28 would still be adequate room for an 18-unit project. He explained that  
29 the majority of the alignment to get through the panhandle would  
30 require additional property from the owner of Tax Lot 800, adding that  
31 because at this point in time, she is not willing to sell any additional  
32 land, the only means of constructing a road through her property  
33 would be through a condemnation. He pointed out that Mr. Stein's  
34 proposal is in violation of several policies of the Comprehensive Plan,  
35 and referred to Goal Nos. 7.3.1.1.H, 7.3.2.1.B, 7.3.4.1.A, and 8.2.1.B, all  
36 of which he offered to discuss individually. He explained that in addi-  
37 tion, Mr. Stein's proposal would also require a larger easement area,  
38 adding that the current proposal provides for an easement of 20 feet in  
39 width across Tax Lot 800, which would include a full public improve-  
40 ment and require a 28-foot wide road for grading purposes and retain-  
41 ing walls. He pointed that there is less of an environmental impact if  
42 the local street is kept further away from the vegetated corridor,  
43 emphasizing that the buffers of this intermittent stream are signifi-  
44 cantly different from those of a perennial stream. Noting that he had

1 spoken Heidi Berg of Clean Water Services today, he pointed out that  
2 she had been very adamant with regard to keeping a road out of this  
3 wetland that runs basically right through the middle of this section of  
4 open space. He referred to a letter from the owner of Tax Lot 800,  
5 Susan Mosher, expressing support of the applicant's plan.

6  
7 Mr. Grillo submitted to the record a document, dated December 11,  
8 2002, expanding on comments made by Mr. Alan DeHarpport in  
9 response to the Friends' of Cooper Mountain's notion of putting the  
10 road in the Option 5 area near the panhandle. He emphasizing that  
11 the applicant strongly disagrees with the suggestions made by Mr.  
12 Stein indicating that this is not the appropriate place to make that  
13 connection up to SW Nora Road.

14  
15 **DAVID DEHARPPORT**, representing Four D Development, Inc. and  
16 Four D Construction, Inc., observed that he is a homebuilder and a  
17 designated master builder by the State of Oregon, adding that allowing  
18 the use of flexible setbacks enables the builder to utilize a lot more  
19 options to design his plan, resulting in a quality building product.

20  
21 Mr. Grillo mentioned that there had been one request to keep written  
22 record open.

23  
24 Commissioner Maks **MOVED** and Commissioner Barnard  
25 **SECONDED** a motion to extend the 11:00 p.m. rule to 11:30 p.m.

26  
27 Motion **CARRIED**, unanimously, with the exception of Commissioner  
28 Johansen, who voted in opposition.

29  
30 Mr. Grillo suggested that rather than keeping the written record open  
31 with regard to economic feasibility issues, the Commission should  
32 make a finding that based upon the testimony, it appears feasible and  
33 is subject to a Letter of Commitment with regard to this project from a  
34 lending institution. He discussed what he referred to as a broader  
35 issue with regard to the ownership of these tracts, expressing his  
36 opinion that the most appropriate solution would be to deed the tracts,  
37 as a whole, to a willing organization. He suggested the option of not  
38 forming a Homeowner's Association to own these tracts in common,  
39 adding that they should be owned separately for reasons he had  
40 already stated. He suggested that if the record is left open, the  
41 applicant should at least be granted the opportunity to submit further  
42 written rebuttal.

43

1 Commissioner Pogue requested clarification with regard to the  
2 anticipated timing for the proposed options to divert traffic.

3  
4 Mr. Grillo advised Commissioner Pogue that the timing for these  
5 mitigation measures would involve immediate Conditions of Approval.

6  
7 Chairman Voytilla questioned whether the project would be completed  
8 all at one time or through phasing and when completion is anticipated.

9  
10 Mr. Alan DeHarpport advised Chairman Voytilla that the entire  
11 project would be completed in one phase, adding that depending upon  
12 when approval is granted, completion should occur within three years.

13  
14 Chairman Voytilla requested further clarification with regard to the  
15 applicant's density calculations.

16  
17 Observing that the density issue is somewhat of a misnomer, Mr.  
18 Grillo stated that while staff has concurred with the applicant's  
19 method of calculating the density, resulting in a maximum density of  
20 73 lots and a minimum density of 58 lots, the applicant is willing to  
21 make minor tweaks, if necessary. He pointed out that there is no clear  
22 and objective standard within the Development Code that requires an  
23 applicant to preserve this area in open space, adding that what would  
24 be subtracted with regard to the Subdivision results in a much higher  
25 number. He emphasized that he does not believe anyone would be  
26 capable of meeting minimum density on this particular site by building  
27 out a straight Subdivision utilizing clear and objective standards,  
28 adding that the applicant has no choice but to submit an application  
29 for a Planned Unit Development. He expressed his opinion that the  
30 additional removal of any lots from the proposal would jeopardize the  
31 economic feasibility of the project, emphasizing that the applicant has  
32 made every attempt to successfully balance all of the issues with  
33 regard to this issue.

34  
35 Referring to page 14 of the Planned Unit Development Staff Report,  
36 Assistant City Attorney Ted Naemura pointed out that this page lists  
37 the criteria for financial feasibility, adding that this criterion provides  
38 for satisfaction with regard to providing market study evidence and  
39 financial feasibility evidence. He requested a summary of any  
40 evidence developed thus far with regard to demonstrating that the  
41 market is actually there as well as what evidence provides the basis for  
42 those views.

43

1 Mr. Grillo advised Mr. Naemura that he does not believe that the  
2 market study requirement necessarily requires a written document  
3 labeled Market Study, expressing his opinion that this requirement  
4 calls for evidence, oral or written, within the record to satisfy  
5 applicable criteria. He stated that the applicant should address this  
6 through submittal of a Letter of Commitment.

7

8 **PUBLIC REBUTTAL:**

9

10 Chairman Voytilla explained that this is the opportunity for any  
11 member of the public who has previously testified this evening to  
12 speak in rebuttal to the applicant's rebuttal.

13

14 Mr. Naemura noted that any public rebuttal is limited to new evidence  
15 to the record.

16

17 Chairman Voytilla pointed out that the only new evidence is the access  
18 plan.

19

20 Mr. Vandehey explained that the access plan and all other evidence  
21 presented by the applicant this evening is located within the  
22 documents of record.

23

24 Chairman Voytilla noted that no public rebuttal to applicant rebuttal  
25 is permitted at this time since this evidence is already located in the  
26 record documents.

27

28 **STAFF COMMENTS:**

29

30 Observing that staff has responses to several comments that have been  
31 made, Development Services Manager Steven Sparks introduced Site  
32 Development Project Engineer Jim Duggan, adding that Mr. Duggan is  
33 able to respond to several issues involving Clean Water Services.

34

35 Site Development Project Engineer Jim Duggan stated that there were  
36 a number of issues brought up in the applicant's presentation and  
37 through public testimony, adding that he would like to address those  
38 issues that in his opinion that were left open or questionable in terms  
39 of how the Commission may react. Referring to Mr. Grillo's testimony  
40 with regard to private streets, he pointed out that these streets would  
41 remain either through the ownership maintenance of the Homeowner's  
42 Association, should one be formed, or when final plat is reviewed by  
43 himself, the maintenance responsibility would be assigned to the

1 adjoining lots. He emphasized that the City of Beaverton would not  
2 accept maintenance for any private streets.

3  
4 Mr. Duggan referred to testimony received indicating concern with  
5 regard to the septic tank and drain field issues for the existing homes  
6 that are adjacent to the proposed Subdivision, noting that Condition of  
7 Approval No. 1 of the Subdivision document provides a very detailed  
8 explanation of how staff proposes to address this septic tank/drain field  
9 issue. He mentioned that a question had been raised with regard to  
10 whether or not it would be obvious if a system fails or is damaged,  
11 noting that in his experience, in August and September of every year,  
12 as long as a home is occupied and the occupants are contributing to the  
13 contents of the septic tank/drain field system, it would become very  
14 obvious that a system has been compromised as a result of  
15 construction activity. He indicated that he feels confident of staff's  
16 ability to address this issue under the rules and regulations that are  
17 currently in effect, emphasizing that this is not an issue of concern at  
18 this time. Observing that the tracts had initially created some concern  
19 for staff, he pointed out that a discussion with Clean Water Services  
20 and statements by Mr. Alan DeHarpport with regard to Clean Water  
21 Services' approval of the proposed configuration of the tracts had  
22 addressed these concerns.

23  
24 Mr. Duggan explained that Kathy Sayles is correct that in the mid-  
25 1990's, there had been a change to Clean Water Services regulations  
26 requiring that tracts be created, rather than placing a single easement  
27 over a lot when a sensitive area and buffer are involved. He pointed  
28 out that the tracts are to be created in a way that that construction  
29 could not be done for a dwelling, emphasizing that this involves only  
30 single-family residential developments. Referring to Condition of  
31 Approval No. 35 for the Subdivision, he pointed out that this condition  
32 attempts to address concerns expressed by both the City of Beaverton  
33 and Clean Water Services with regard to the preservation of that tract  
34 as an open space.

35  
36 Commissioner Maks **MOVED** and Commissioner Barnard  
37 **SECONDED** a motion to suspend the 11:00 p.m. rule until 11:45  
38 Midnight.

39  
40 Motion **CARRIED**, unanimously.

41  
42 Commissioner Maks stated that while he appreciates Mr. Duggan's  
43 comments, if the Planning Commission determines that the present  
44 proposal to preserve these tracts do not meet the policies of the

1 Comprehensive Plan, any comments by Clean Water Services have no  
2 bearing on this issue, adding that he respectfully disagrees that this  
3 can not be a topic involved in these deliberations.

4  
5 Mr. Duggan assured Commissioner Maks that he had not meant to  
6 imply that this could not be a topic involved in these deliberations,  
7 adding that he is not certain of what he had said.

8  
9 Commissioner Maks advised Mr. Duggan that he could no longer  
10 remember his own comments either, noting that as far as he is  
11 concerned, the issue is still up for grabs.

12  
13 Mr. Duggan concurred, observing that the Conditions of Approval had  
14 been prepared by staff based upon the rules and regulations as  
15 understood, and pointed out that the Planning Commission does have  
16 some discretion with regard to these issues.

17  
18 Mr. Sparks stated that he has a number of things he would like to  
19 respond to based upon the testimony that has been presented. He  
20 referred to Condition of Approval No. 18 of the Subdivision, which  
21 addresses staff's desire to maintain a minimum of 75% of a cul-de-sac.  
22 He explained that while the applicant has stated that 75% is an  
23 arbitrary number and not proportional to the project, staff respectfully  
24 disagrees with that statement. He mentioned that pages 13 through  
25 16 of the Appeal Staff Report for the Subdivision contain fairly  
26 extensive findings in support of staff's recommendation. Observing  
27 that Mr. Duggan has responded with regard to the private street  
28 deeded to the City of Beaverton, he noted that staff has also discussed  
29 the access road to Nora Road for the water quality control area.

30  
31 Commissioner Maks referred to Sheet 1 of 14, specifically the private  
32 drive adjacent to Lots 66, 67, and 68.

33  
34 Mr. Sparks requested that Mr. Whyte respond to that specific issue,  
35 adding that Mr. Duggan had addressed most of his comments.  
36 Referring to the applicant's calculations regarding density, he noted  
37 that staff had simply reviewed their calculations and had not  
38 specifically gone out and recalibrated any type of survey documents.

39  
40 Mr. Whyte explained that the only remaining private access is specific  
41 to that shown for Lots 66, 67, and 68 would be an easement access,  
42 rather than a tract, adding that this easement would benefit the  
43 owners of those three and maybe even a fourth. He pointed out that  
44 this Condition of Approval should be specific with regard to the 75%

1 that had been referenced, and described several changes to Conditions  
2 of Approval that had been mentioned this evening as well, adding that  
3 staff is receptive to further changes.

4  
5 Commissioner Maks mentioned a correction to Condition of Approval  
6 No. 13 in Facilities Review, specifically striking the words “or other  
7 approved types of construction fencing”, adding that the document  
8 would then read “a chain link construction fence identified with  
9 flagging, a minimum of six feet in height, shall be placed in the  
10 approximate root zone of the tree”, with storage to be prohibited within  
11 the fenced area.

12  
13 Chairman Voytilla pointed out that there had been significant  
14 testimony provided by individuals with concerns relative to pedestrian  
15 access to school, requesting clarification of whether the Conditions of  
16 Approval had addressed the concerns of the Beaverton School District,  
17 specifically with regard to safety impacts.

18  
19 Mr. Whyte advised Chairman Voytilla that he believes that sidewalks  
20 are proposed in connection with the Subdivision.

21  
22 Observing that he can briefly address this issue from a public  
23 improvement perspective, Mr. Duggan stated that the Madrona  
24 Heights Subdivision in Washington County had been developed under  
25 County requirements. He explained that this is addressed within the  
26 respective Development Codes for both Washington County and the  
27 City of Beaverton, noting that sidewalks and pedestrian facilities  
28 within Subdivisions are the responsibility of the individual lot owners.  
29 He clarified that this is typically done at the time of the development  
30 or at the point when a safety hazard is determined, adding that within  
31 the City of Beaverton, when safety becomes an issue, the City  
32 Engineer has the authority to direct property owners to provide  
33 sidewalks on streets that have been developed and are open to the  
34 public. He observed that this could be accomplished through the  
35 creation of a Local Improvement District or by requiring each  
36 individual Lot owner construct an appropriate sidewalk.

37  
38 Commissioner Maks **MOVED** and Commissioner Barnard  
39 **SECONDED** a motion to suspend the 11:00 p.m. rule until 11:59 p.m.

40  
41 Motion **CARRIED**, unanimously.

42  
43 On question, Commissioner Maks advised Commissioner Johansen  
44 that his goal this evening is to get something done.

1 Mr. Sparks pointed out that staff is comfortable with the Letter of  
2 Commitment that had been proposed by the applicant, adding, in  
3 response to an early question, that any potential damage or necessary  
4 maintenance to roads would become the responsibility of the applicant  
5 if it could be demonstrated that they had created the damage.

6  
7 Mr. Naemura noted that there are two requests outstanding  
8 requesting to submit additional information, adding that the Planning  
9 Commission has the option of holding the record open for a period of at  
10 least seven days or continuing the Public Hearing.

11  
12 Expressing his concern with the 120-day deadline, Commissioner Maks  
13 questioned the current status of this application.

14  
15 Mr. Sparks informed Commissioner Maks that the applicant has  
16 submitted a limited waiver, adding that the expiration is March 7,  
17 2003, at which point it is necessary to complete the final written order  
18 including all appeals. He discussed the Public Hearing calendar,  
19 adding that he strongly encourages the Planning Commission to make  
20 a decision tonight.

21  
22 Commissioner Maks emphasized that it is necessary to respond to the  
23 request for a continuance.

24  
25 Mr. Naemura advised Commissioner Maks that the request had been  
26 made for leaving the record open, rather than a continuance,  
27 suggesting that the Planning Commission should proceed with  
28 reaching consensus and making a decision, adding that staff would be  
29 capable of handling the issue from that point.

30  
31 Mr. Sparks pointed out that staff would like the Planning Commission  
32 to at least make a preliminary decision this evening, adding that staff  
33 would return next week with a final land use order for consideration  
34 and adoption.

35  
36 The public portion of the Public Hearing was closed.

37  
38 **PLANNING COMMISSION DELIBERATION:**

39  
40 Chairman Voytilla provided a brief explanation of the consensus  
41 process for the benefit of the public, emphasizing that three  
42 applications are under consideration at this time.

43



1 Commissioner Barnard pointed out that there has been a great deal of  
2 discussion this evening with regard to traffic and safety, adding that  
3 although he fully understands why the public has concerns with these  
4 issues, the applicant is correct in stating that this would be temporary  
5 and that there would be some changes in the long term situation. He  
6 noted that without the property being available to provide an access to  
7 Nora Road, this is not feasible at the present time. Referring to  
8 Development Code Section 20.05.20, he mentioned that the R-5 zoning  
9 designation is intended to establish standard urban density residential  
10 home sites where a minimum land area of 5,000 square feet is  
11 available for each dwelling unit and where full urban services are  
12 provided. He reiterated that this section references a minimum, rather  
13 than an average, of 5,000 square feet per dwelling unit. Referring to  
14 Development Code Section 40.15.15.2.2.C.3, he expressed his opinion  
15 that the three-foot setbacks do not necessarily address the  
16 compatibility of the surrounding areas appropriately. He referred to  
17 Development Code Section 40.5.15.3.C.3, which addresses the financial  
18 feasibility, noting that he views this more with the understanding that  
19 there is a viable project as a whole.  
20

21 Commissioner Barnard explained that he is also concerned that the  
22 tracts, as they have been established, meeting the Comprehensive Plan  
23 Section 7.3.11.B, creating a potential for a great deal of encroachment  
24 by the property owners. He noted that because the property owners  
25 constantly remove and change the fences, it is not feasible to anticipate  
26 that they would remain in their original positions, adding that he is  
27 unable to support the Conditional Use Permit application for the  
28 Planned Unit Development. He stated that while he has no concerns  
29 with the Tree Preservation Plan, he does have issues with the Appeal  
30 of the Subdivision, specifically with the proposal for 69 lots. He  
31 pointed out that it is difficult to approve a proposal that requires 69  
32 lots if the R-5 density requirements are not met.  
33

34 Mr. Naemura advised Councilman Barnard that there is a defect in the  
35 first ground he had referenced with regard to his position, specifically  
36 in stating that the lot size standard is 5,000 square feet. He expressed  
37 his opinion that it is inappropriate to cite this as a ground for denial  
38 because of the fact that the Planned Unit Development scenario is  
39 subject to a type of a movement, adding that legally there is what he  
40 referred to as "movement entitlement" that does not allow the City of  
41 Beaverton to determine that every lot must be 5,000 square feet.  
42

43 Referring to page PA-8 of the Development Code, Commissioner Maks  
44 read that deviations from specific site development requirements in a

1 mixture of combinations of residential, commercial, and industrial uses  
2 is allowable.

3  
4 Commissioner Johansen pointed out that the Development Code is  
5 completely unambiguous with respect to requiring a market study for a  
6 Planned Unit Development, adding that he respectfully disagrees with  
7 staff's interpretation. Observing that the applicant has proposed an  
8 alternative that would require a Condition of Approval providing that  
9 they submit a Financial Commitment Letter from a financial lending  
10 institution, he noted that the problem with that approach and why it  
11 does not meet applicable criteria is that it does not provide the  
12 Planning Commission, staff, or the public with permission to review  
13 the assumptions to determine whether it is appropriate. Noting that  
14 he suspects that the applicant is correct, he explained that  
15 unfortunately the Development Code requires more specific  
16 clarification, adding that he is not comfortable that the application  
17 meets Development Code Section 40.05.15.3.C.3.

18  
19 Commissioner Johansen pointed out that he considers the access issue  
20 to be more problematic, adding that it is unclear how this would be  
21 resolved through the Washington County process. He explained that  
22 one potential option would be a single access in and out via Red Rock  
23 Way, adding that he disagrees with the neighborhood somewhat with  
24 regard to the amount of traffic that would result on that street. He  
25 stated that while he does not believe this would be in excess of what  
26 one would expect to see on a neighborhood route, he does have an issue  
27 with a single access potential with respect to Comprehensive Plan  
28 Goals and Policies regarding location and design of transportation  
29 facilities, reasonable access to and from residential areas, and the  
30 development of neighborhood and local connections to provide  
31 adequate circulation in and out of the neighborhood. With no  
32 assurance in place as to adequate circulation and future access  
33 connectivity to the north, he expressed his opinion that this application  
34 is premature until such time that an access can be provided to Nora  
35 Way. He stated that he is unable to support the Conditional Use  
36 Permit for the Planned Unit Development because he does not believe  
37 that it meets Development Code Section 6.2.1.E, with regard to  
38 maintaining livability through the proper location and design of  
39 transportation facilities, or Development Code Section 6.2.1.A, with  
40 regard to protecting the neighborhood from excessive through traffic  
41 and travel speeds. Referring to the following section, which describes  
42 while providing reasonable access to and from residential areas, he  
43 expressed his opinion that this is not met by the application as  
44 presented. Referring to Development Code Section 6.2.5, which

1 addresses the goal of transportation facilities which are accessible to  
2 members of the community and reduce trip length, which is further  
3 implemented by Development Code Section 6.2.5.B, which states that  
4 developed neighborhood and local connections to provide adequate  
5 circulation in and out of the neighborhood, he pointed out that this is  
6 not met with the current proposal. He expressed his opinion that this  
7 could be met if the connection were available to the north, emphasizing  
8 that it is not available at this time and that there is no assurance of  
9 when this might occur.

10  
11 Commissioner Maks **MOVED** and Commissioner Barnard  
12 **SECONDED** a motion to suspend the 11:00 p.m. rule until 12:15 a.m.

13  
14 Motion **CARRIED**, unanimously.

15  
16 Commissioner Johansen stated that while he does not support the  
17 Conditional Use Permit for the Planned Unit Development, he does  
18 support both the Tree Preservation Plan and the Appeal of the  
19 Planning Director's decision denying the Subdivision.

20  
21 Chairman Voytilla stated that concurs with the views expressed by  
22 Commissioner Johansen, adding that the application falls short of  
23 meeting applicable criteria primarily with Comprehensive Plan  
24 Chapter 6, which addresses transportation issues and impacts to the  
25 surrounding neighborhood. Referring to his concerns with regard to  
26 Comprehensive Plan Section 6.2.5, which addresses the reduction of  
27 trip length, he stated that he also has concerns with the setbacks with  
28 regard to the Planned Unit Development, specifically meeting  
29 reasonable compatibility with adjacent properties and potential  
30 impacts upon future properties. He discussed his concerns with  
31 compatibility issues, expressing his opinion that this could not be  
32 created with the amount of slope that exists on the site in addition to  
33 the potentially small lots. Pointing out that he does believe that the  
34 Planned Unit Development process with regard to this application is  
35 appropriate, he stated that he does not feel that the applicant has  
36 made adequate effort to demonstrate appropriate creativity or  
37 innovation on behalf of this proposal. He described optional tools that  
38 have been utilized in applications for Planned Unit Developments,  
39 including zero lot lines and shared driveway accesses, which minimizes  
40 grading and maximizes tree preservation. He pointed out that rather  
41 than working with three-foot setbacks, often Lot Line Adjustments can  
42 be utilized, adding that he is accustomed to applications that actually  
43 demonstrate that the architecture is going to be worthy of variations to

standards, which requires proof with regard to compatibility with both the adjacent neighborhoods and the City of Beaverton.

Chairman Voytilla stated that he is very concerned with the protection of the Significant Natural Resources in the creek area, and referred to Development Code Section 7.3.3.1, which provides for protection, as well as Development Code Section 7.3.2.1, which promotes the health of the environment following the development. He added that everyone having their own tract adjacent to their property would not be acceptable. He discussed the pro-posed commitment letter with regard to financial feasibility, expressing his opinion that while this does not appropriately address Commissioner Johansen's concerns, an appraisal or specific market study might be considered adequate. He stated that he is comfortable with the remaining statements of both Commissioner Barnard and Commissioner Johansen, adding that while he is not in support of the Conditional Use Permit for a Planned Unit Development or the related Tree Preservation Plan, he concurs with staff's recommendation for approval of the Appeal of the Planning Director's decision denying the Subdivision, but accessibility is still a concern.

Commissioner Maks expressed his appreciation to the public for both their testimony and written documentation, adding that he expects high standards from both the applicant and the neighborhood. He pointed out that he disagrees with his fellow Commissioners tremendously with regard to the ingress/egress issues, adding that it is not the fault of the developer that SW 178<sup>th</sup> Avenue has bent guard-rails. He pointed out that if SW 170<sup>th</sup> Avenue were an issue, Red Rock Way would not be here. He noted that the applicant has gone above and beyond in providing a plan with both ingress and egress, adding that the vehicular numbers for ADT are not this low on SW 130<sup>th</sup> Avenue, SW 135<sup>th</sup> Avenue, or any other Neighborhood Routes. Emphasizing that these numbers are minimal, he pointed out that while he understands that the neighborhood has no traffic and the street is designated a Neighborhood Route with future connectivity. He reiterated that he disagrees vehemently with his fellow Commissioners with regard to traffic issues, expressing his opinion that there are no traffic issues in this neighborhood. Observing that the applicant has not met applicable criteria with regard to the Planned Unit Development, he referred to Development Code Section 40.05.15.2.C, Criteria No. 2, which requires compliance with the Comprehensive Plan.

Referring to Development Code Section 40.05.15.3.A., which addresses advances in technology and design, Commissioner Maks stated that

1 the proposal does not comply with this Section. Stating that a compre-  
2 hensive development equal to or better than that result-ing from tradi-  
3 tional lot by lot land use development, he pointed out that Mr. Grillo  
4 had addressed this as a standard Subdivision in one point, although he  
5 does not necessarily agree, adding that this has not been clearly  
6 documented. With regard to cases in which the design of the overall  
7 unit permits flexibility in the placement and uses of structures and the  
8 location of open spaces, circulation, facilities, etc., he pointed out that  
9 neighborhoods do not like Planned Unit Developments, basically  
10 because they look different from their own homes. Explaining that a  
11 Planned Unit Development is a give and take situation, he noted that  
12 a very fine line is involved, adding that the applicant has not gone that  
13 extra step to demonstrate innovativeness that would convince the  
14 Planning Commission to approve their proposal.  
15

16 Commissioner Maks also stated concerns with Comprehensive Plan  
17 Policy Nos. 3.41.A; 3.41.E; 3.13.G; 7.3.1.1.A, C, and D; and 7.4.1.G.A;  
18 Commissioner Maks stated that he is also concerned with the tract  
19 with regard to the natural area. Observing that he had not actually  
20 looked them up, he emphasized that he could find Comprehensive Plan  
21 Policies that confirm his assertion that all possible actions are not  
22 being taken. He pointed out that the applicant has a very tough site  
23 for development purposes. He cited Development Code Section  
24 40.05.15.2.C, which provides that the location, size, design, and  
25 functional characteristics are such that it can be made reasonably  
26 compatible with and have minimum impact on the livability and the  
27 appropriate development of other properties in the surrounding  
28 neighborhood. Expressing his opinion that this criteria has not been  
29 met, he noted that public testimony has been provided as evidence,  
30 although the neighborhood must realize that the applicant is dealing  
31 with some significant restrictions. He explained that he is basing his  
32 decision upon evidence presented by the public this evening with  
33 regard to compatibility and livability, with regard to site setback  
34 requirements (rear setbacks and side yard setbacks). He agreed that  
35 while the applicant had provided a good definition of visual relief, he  
36 also believes testimony by the public that indicates that they would not  
37 benefit from that visual relief if the development is built as proposed.  
38 Concluding, he stated that he would support a motion for denial of the  
39 Conditional Use Permit for the Planned Unit Development, adding  
40 that this also means denial of both the Tree Preservation Plan and the  
41 Appeal of the Planning Director's decision denying the Subdivision.  
42

43 Observing that he agrees almost entirely with Commissioner Maks'  
44 statements with regard to the tracts, Commissioner Winter referred to

1 Development Code Section 40.05.15.3.D, adding that he totally concurs  
2 with Commissioner Johansen's statements with regard to  
3 transportation and Commissioner Voytilla's summary of concerns  
4 regarding transportation, specifically Comprehensive Plan Policy No.  
5 6.2.1.E, which provides for protection for neighborhoods from excessive  
6 traffic travel speeds while providing reasonable access to and from a  
7 development. Referring to Comprehensive Plan Policy No. 6.2.2, which  
8 provides for connectivity, and develops and maintains appropriate  
9 internal circulation standards, he pointed out that his fellow  
10 Commissioners have addressed his concerns, adding that he is not in  
11 support of the Conditional Use Permit for the Planned Unit  
12 Development, the Tree Preservation Plan, or the Appeal of the  
13 Planning Director's decision to deny the Subdivision.

14  
15 Commissioner Pogue expressed his agreement with the comments of  
16 his fellow Commissioners in response to Chapter 6, adding that he  
17 would not support the Conditional Use Permit for the Planned Unit  
18 Development.

19  
20 Commissioner Bliss stated that in deference to many of his fellow  
21 Commissioners he disagrees with the traffic issues, adding that he  
22 does not agree that there is an issue based upon the traffic numbers  
23 and designation of the Neighborhood Routes. He emphasized that  
24 these traffic counts do not even come close to the maximum, noting  
25 that he recognizes that there are no sidewalks on SW Spellman Drive.

26  
27 Commissioner Maks **MOVED** and Commissioner Barnard  
28 **SECONDED** a motion to suspend the 11:00 p.m. rule until 12:30 a.m.

29  
30 Motion **CARRIED**, unanimously.

31  
32 Commissioner Bliss pointed out that a three-foot setback amounts to a  
33 40% reduction, which is quite significant, in his opinion, adding that he  
34 is concerned with both livability and compatibility. He stated that he  
35 would not support the Conditional Use Permit for the Planned Unit  
36 Development, the Tree Preservation Plan, or the Appeal of the  
37 Planning Director's denial of the Subdivision.

38  
39 Commissioner Maks **MOVED** that CUP 2002-0004 – Sunrise at  
40 Cooper Mountain Planned Unit Development Conditional Use Permit  
41 be **DENIED**, based upon Staff Report dated December 4, 2002, as  
42 amended this evening, citing and directing staff to develop findings  
43 based upon the decision-making process and deliberations this

1 evening, and the criteria cited, and directing staff to prepare and  
2 submit a land use order for final approval on December 18, 2002.

3  
4 Mr. Naemura asked questions with regard to the motion.

5  
6 Restating his motion, Commissioner Maks **MOVED** and Commissioner  
7 Barnard **SECONDED** a motion that CUP 2002-0004 – Sunrise at  
8 Cooper Mountain Planned Unit Development Conditional Use Permit  
9 be **DENIED**, based upon the evidence presented that is in the record  
10 as of this date, and direct staff to go forward and develop findings  
11 based upon the criterion in the discussion and reasoning in the  
12 deliberations this evening.

13  
14 Motion **CARRIED** by the following vote:

15  
16 **AYES:** Barnard, Bliss, Johansen, Maks, Pogue,  
17 Voytilla, and Winter.

18 **NAYS:** None.

19 **ABSTAIN:** None.

20 **ABSENT:** None.

21  
22 12:21 p.m. to 12:24 p.m. – recess.

23  
24 Commissioner Maks **MOVED** and Commissioner Barnard  
25 **SECONDED** a motion that APP 2002-0012 – Sunrise at Cooper  
26 Mountain Appeal of Planning Director's Decision be **DENIED**, based  
27 upon Development Code Section 40.35.15.3.C for all proposed lots to  
28 conform to the size and dimensional requirements of this Ordinance,  
29 and the proposal complies with all applicable and statutory ordinance  
30 requirements and regulations.

31  
32 Motion **CARRIED** by the following vote:

33  
34 **AYES:** Barnard, Bliss, Johansen, Maks, Pogue,  
35 Voytilla, and Winter.

36 **NAYS:** None.

37 **ABSTAIN:** None.

38 **ABSENT:** None.

39  
40 Commissioner Maks **MOVED** and Commissioner Barnard  
41 **SECONDED** a motion that TPP 2002-0005 – Sunrise at Cooper Moun-  
42 tain Tree Preservation Plan be **DENIED**, based upon Development  
43 Code Section 40.75.15.1.C.4.b, Sections 1, 2, 3, 4, 5, and 7.  
44

1 Motion **CARRIED** by the following vote:

2  
3 **AYES:** Barnard, Bliss, Johansen, Maks, Pogue,  
4 Voytilla, and Winter.

5 **NAYS:** None.

6 **ABSTAIN:** None.

7 **ABSENT:** None.

8  
9 Mr. Sparks advised the Commissioners that staff would return the  
10 following week and present appropriate Land Use Orders reflecting  
11 their decisions for consideration and final approval.

12  
13 **APPROVAL OF MINUTES:**

14  
15 Approval of the minutes of the meeting of October 2, 2002, was  
16 postponed until December 18, 2002.

17  
18 **MISCELLANEOUS BUSINESS:**

19  
20 Observing that it is the duty of the senior member of the Planning  
21 Commission to initiate nominations for the positions of Chairman and  
22 Vice-Chairman for the following year, Commissioner Maks expressed  
23 his appreciation to Chairman Voytilla for his service and leadership  
24 throughout the years 2001 and 2002.

25  
26 Commissioner Maks **NOMINATED** Commissioner Barnard to serve as  
27 Chairman for the year 2003.

28  
29 Commissioner Johanson **SECONDED** the motion and closed  
30 nominations.

31  
32 Motion that Commissioner Barnard serve as Chairman for the year  
33 2003 **CARRIED** unanimously.

34  
35 Commissioner Maks **NOMINATED** Commissioner Johansen to serve  
36 as Vice-Chairman for the year 2003.

37  
38 Commissioner Barnard **SECONDED** the motion and closed  
39 nominations.

40  
41 Motion that Commissioner Johansen serve as Vice-Chairman for the  
42 year 2003 **CARRIED** unanimously.

43



1 Chairman Voytilla reminded the Commissioners that the annual  
2 holiday luncheon for staff is scheduled in the 2<sup>nd</sup> Floor Conference  
3 Room at 11:30 p.m. Wednesday, December 18, 2002, adding that  
4 Commissioner Barnard is catering the refreshments.

5  
6 The meeting adjourned at 12:29 p.m.